

FILED

DEC 29 2005

UNITED STATES DISTRICT COURT  
DISTRICT OF ALASKA  
By am Deputy

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ALASKA

JOHN VICTOR MORKAL,

Plaintiff,

vs.

STATE OF ALASKA,

Defendant.

Case No. A05-0200 CV (JKS)

ORDER

John Victor Morkal was indicted by a state grand jury for the crime of theft of a motor vehicle. He sought to remove the state criminal proceeding to this Court pursuant to 28 U.S.C. § 1443 on the ground that the complaining witness was white and Morkal is hispanic. The Court concluded that it did not have jurisdiction and that the removal was improper because Morkal had not shown that his race played any part in the Grand Jury's decision to indict him. There is nothing in the record to suggest hispanic persons are treated differently in the state of Alaska when they steal motor vehicles than non-hispanic persons. In short, the claim was frivolous. See Docket Nos. 5; 8 (Orders).

Morkal now seeks authorization to appeal in forma pauperis without paying fees. The applicable statute, 28 U.S.C. § 1915(a)(3), provides that an appeal in forma pauperis may not be taken if the trial court certifies that it is not taken in good faith. The statute seems to suggest that if the Court says nothing good faith will be presumed and the appeal may proceed. The Ninth Circuit, however, has not taken this view of the statute. If the Court finds that an appellant is indigent and authorizes an appeal in forma pauperis but is silent regarding the merits of the appeal, the Ninth Circuit will remand the matter directing the Court to specifically address the issue of good faith.

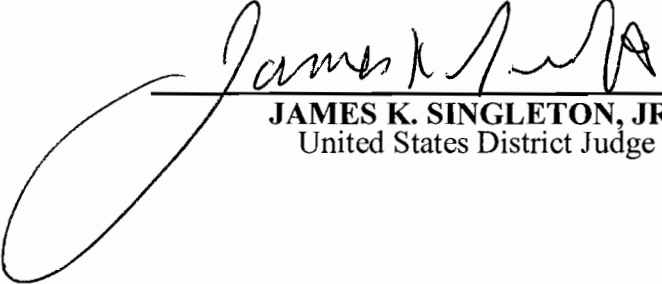
Thus the Ninth Circuit seems to view the statute as requiring the trial court to certify that an appeal is in good faith before a litigant may be authorized to appeal in forma pauperis. The Court will proceed on that basis in order to avoid unnecessary delay in processing Morkal's appeal.

In order to grant this request the Court must determine that the proposed appeal is taken in good faith. In context this means that Morkal's right to remove his criminal prosecution is not frivolous. Morkal's claims are frivolous, however, and the Court cannot certify that the appeal is in good faith. See 28 U.S.C. § 1915(a)(3). If Morkal wishes to appeal he must petition a motions panel of the Ninth Circuit to authorize the appeal in forma pauperis. Cf. *Celske v. Edwards*, 164 F.3d 396 (7th Cir. 1999) (concluding that a district court ruling that appeal is not in good faith is reviewable de novo by appellate court).

**IT IS THEREFORE ORDERED:**

The application to proceed without payment of fees on appeal is **DENIED**. This order is without prejudice to Morkal applying to a panel of the Ninth Circuit for leave to appeal in forma pauperis.

Dated at Anchorage, Alaska, this 28 day of December 2005.

  
**JAMES K. SINGLETON, JR.**  
 United States District Judge

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pm 12-29-05

✓ ATTORNEY GENERAL'S OFFICE (AG-STE-407)

✓ J. MORKAL  
 appeals clerk

ORDER